

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
INCOM INTERNATIONAL, INC. }

For Appellant: Thomas I. Samson
Controller

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Incom International, Inc., for refund of penalty in the amount of \$1,000.00 for the income year ended September 30, 1978.

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The issue presented by this appeal is whether respondent properly imposed a penalty for late payment of tax.

For its income year ended September 30, 1978, appellant requested and was granted an extension of: time in which to file its California corporation franchise tax return. The request was accompanied by a payment of \$40,678.00, which brought appellant's credits for the year to \$92,221.00, its estimated tax liability.

Appellant's return for that income year was filed within the extended period and showed a tax liability of \$136,022.00, leaving a balance due, after credits, of \$43,801.00. Payment of this amount, plus interest, was sent with the return. When the return was processed, respondent assessed a \$1,000.00 penalty for underpayment of tax pursuant to section 25934.2 of the Revenue and Taxation Code.

Appellant later filed an amended return for its income year ended September 30, 1978, showing a reduction in its tax liability from \$136,022.00 to \$130,065.00 and. requesting a refund of \$5,957.00. Before respondent had acted on the amended return, appellant paid the penalty assessment and filed a claim for refund of the penalty. Respondent allowed the refund of tax as shown on the amended return, plus interest, but did not abate the penalty. Appellant's claim for refund of the penalty was-denied on February 14, 1980, and this timely appeal followed.

The penalty in question was imposed pursuant to section 25934.2 of the Revenue and Taxation Code, which provides, in pertinent part:

(a) If any taxpayer fails to pay the amount of tax required to be paid under Sections 25551 and 25553 by the date prescribed therein,- then unless it is shown that the failure was due to reasonable cause and not willful neglect, a penalty of 5 percent of the total tax unpaid as of the date prescribed in Sections 25551 and 25553 shall be due and payable upon notice and demand from the Franchise Tax Board. ... In no case, however, may the penalty imposed under this section be less than five dollars (\$5) or more than one.. thousand dollars (\$1,000).

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* * *

(c) For purposes of this section, total tax unpaid means the amount of tax required to be shown on the return reduced by the amount of any part of the tax which was paid on or before the date prescribed for filing, the return.

Revenue and Taxation Code section 25551 provides:

Except as otherwise provided in this chapter, the tax imposed by this part shall be paid not later than the time fixed for filing the return (determined without regard to any extension of time for filing the return). (Emphasis added.)

Appellant's tax return for its income year ended September 30, 1978, was due by December 15, 1978, two months and fifteen days after the end of its income year. (Rev. & Tax. Code, § 25401, subd. (a).) Its full tax liability was due at that time even though an extension was granted for filing the return. (Rev. & Tax. Code, § 25551.) 'Because appellant's full tax liability was not paid by the due date for its return, the penalty provided by section 25934.2 was properly imposed, unless appellant can show that its failure to pay was due to reasonable cause and not willful neglect. To establish reasonable cause, appellant must show that its failure to pay occurred despite the exercise of ordinary business care and prudence. (Appeal of Cerwin-Vega International, Cal. St. Bd. of Equal., Aug. 15, 1978.)

Appellant contends that reasonable cause existed for its failure to pay in full by the due date because, although it had made reasonable efforts to consider the effects of certain dividend income it had received, due to its lack of experience in reporting significant amounts of that type of income and the complexity of the computation, it failed to take into account the effect on its interest offset computation.

The imposition of this penalty was upheld in the Appeal of Ayco Financial Services, Inc., decided by this board on May 9, 1979, where we found that a multinational corporation's difficulty in accurately estimating the tax due based on its worldwide income was not evidence of reasonable cause sufficient to excuse its substantial underpayment. The inexperience of a

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bookkeeper was similarly found insufficient to constitute reasonable cause for underpayment in the Appeal of Seaside Extended Care Center, decided August 16, 1979.

'In the present appeal, although the computation involved may have been complex, appellant clearly had the necessary information available. It appears that appellant had received this type of dividend income before, although never in significant amounts, and we, **must** conclude that it should have known that the, income would have to be considered in its interest offset computation. We believe that its failure to do so indicates a lack of ordinary business care and prudence.

We find that appellant has not established that its failure to pay its tax liability in full by the return due date was due to reasonable cause., Respondent's action is, therefore, sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Incom International, Inc., for refund of penalty in the amount of \$1,000.00 for the income year ended September 30, 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of March , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg and Mr. Nevins present.

_____, Chairman
_____, George R. Reilly, Member
_____, Ernest J. Dronenburg, Jr., Member
_____, Richard Nevins, Member
_____, Member